

DRAFT
BOARD OF OPTOMETRY
BOARD MEETING
MAY 5, 2010

TIME AND PLACE: The Board of Optometry (Board) meeting was called to order at 11:03 a.m. on Wednesday, May 5, 2010, at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Room 3, Henrico, Virginia.

PRESIDING OFFICER: David H. Hettler, O.D., President

MEMBERS PRESENT: Gregory P. Jellenek, O.D.
W. Ernest Schlabach, O.D.
Jacquelyn S. Thomas, Citizen Member
Angela Tsai, O.D.

MEMBERS NOT PRESENT: Jonathan R. Noble, O.D.

STAFF PRESENT: Leslie L. Knachel, Executive Director for the Board
Eric A. Gregory, Assistant Attorney General, Board Counsel
Dianne Reynolds-Cane, Director
Arne Owens, Chief Deputy Director
Elaine Yeatts, Senior Regulatory Analyst
Carol Stamey, Operations Manager

OTHERS PRESENT: Cal Whitehead, Virginia Society of Eye Physicians and Surgeons (VSEPS)
Raeston King, Ophthalmology
Neal Kauder, VisualResearch, Inc.
Kim Langston, VisualResearch, Inc.

QUORUM: With five members of the Board present, a quorum was established.

PUBLIC COMMENT: No public comment was presented.

AGENDA: The agenda was revised to include a Director's report and a briefing from VisualResearch and discussion of Pre-Hearing Consent Orders (PHCO), per diem and a closed session.

APPROVAL OF MINUTES: Dr. Jellenek moved to approve the minutes of the January 26, 2010, and December 8, 2009, full Board meetings and the CPT Code Committee meeting of October 29, 2009. The motion was seconded and carried.

DIRECTOR'S REPORT:

Dianne Reynolds-Cane, M.D., Director, introduced herself and presented a brief bio. Additionally, she introduced Mr. Arne Owens, Chief Deputy Director.

Dr. Reynolds-Cane presented a plaque to the board's current board president, David Hettler, O.D., for his eight years of service to the Board of Optometry.

REGULATORY UPDATE:

Ms. Yeatts informed the Board that the proposed regulations regarding increased fees is at the Secretary's Office for approval.

DISCUSSION ITEMS:**Sanction Reference Points (SRP) Project**

Neal Kauder and Kim Langston, VisualResearch, Inc., provided an update and evaluation of the effectiveness of the current processing of the SRP worksheets. Additionally, he provided a statistical analysis of the compliance and departure rates noting that the Board had achieved an 80% agreement rate. Mr. Kauder further identified possible reasons for the Board's departures from the guidelines and recommended possible revision to the bottom of the SRP worksheet and further training. Ms. Langston requested that the Board determine a future date for training and forward that date to her via e-mail.

Review Format and Content Guidance Documents

Ms. Yeatts requested that the Board review the guidance documents 105-15, 105-16, 105-17 and 105-18. She noted concerns that the documents may be outdated, addressed in the current regulations and or difficult to locate because the guidance issue was located within a newsletter.

Dr. Jellenek moved to remove guidance documents 105-15 and 105-16 and that guidance documents 105-17 and 105-18 be reviewed by the Legislative/Regulatory Review Committee. The motion was seconded and carried.

Petition for Rulemaking

Ms. Yeatts informed the Board of its options regarding the Petition for Rulemaking to amend the requirements relating to the practice of optometry adjacent to a mercantile establishment.

Dr. Tsai moved to deny the Petition for Rulemaking because

the issue is already addressed in the current statutes. The motion was seconded and carried.

Approval of By-Laws

Ms. Knachel informed the Board that the By-Laws were revised to include the Committees' job descriptions and to correct the number formatting.

Dr. Hettler requested that the committee membership include two or more board members. Dr. Schlabach moved to accept all amendments as presented. The motion was seconded and carried.

Annual ARBO Meeting Attendance

Dr. Hettler appointed Dr. Noble as the voting delegate to attend the ARBO meeting in June. Additionally, he reported that Ms. Knachel and Dr. Schlabach are attending the meeting.

Dr. Hettler reported that he would be attending the VOA's meeting in June and would be presenting a report of the Board's activities.

Informal Conference Board Member Assignment

Ms. Knachel addressed the Board regarding board member disciplinary case assignment (probable cause determination). As a time and cost savings measure, Ms. Knachel informed the Board that two members of the Board could be assigned cases to hear on a particular date even though the cases may have been reviewed by other board members who determined probable cause.

It was the consensus of the Board that Ms. Knachel develop a procedure guidance document for the Board's review.

CPT Code Request from Dr. Rinearson

Dr. Rinearson requested that the following non-invasive CPT codes be approved: 67840, 67850, 17000, 17003, 17004, 17110 and 17111. Dr. Jellenek moved to approve the CPT codes as requested in Dr. Rinearson's letter dated April 20, 2010. The motion was seconded and carried.

Pre-Hearing Consent Orders

Ms. Knachel addressed the Board regarding delegation of authority to the executive director to negotiate PHCO's and

Consent Orders with the chair of the Special Conference Committee or Chair in the matter of a formal hearing. Dr. Schlachach moved to table the matter for one year. The motion was seconded and carried.

Per Diem

Dr. Schlachach voiced his concern over the loss of per diem. Further, he noted that board members should receive the same compensation for per diem as the General Assembly.

CLOSED SESSION:

Dr. Tsai moved that the Board convene a closed meeting pursuant to § 2.2-3711.A(28) of the Code of Virginia for consultation with legal counsel. Additionally, Dr. Tsai moved that the Director, Dr. Reynolds-Cane, Mr. Arne Owens, Ms. Knachel, Mr. Gregory, Ms. Stamey, Mr. Jim Banning, Ms. Faye Lemon, Mr. Peter Oppen, and Mr. Sammy Johnson attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations.

OPEN SESSION:

It was discovered that an incorrect motion had been made for the closed session. Thus, Dr. Schlachach moved to withdraw the motion for closed session. The motion was seconded and carried. Dr. Tsai moved to reconsider the motion. The motion was seconded and carried.

Dr. Tsai moved to certify that only public matters lawfully exempted from open meeting requirements under Virginia law were discussed in the closed meeting and only public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the board. The motion was seconded and passed.

CLOSED SESSION:

Dr. Tsai moved that the Board convene a closed meeting pursuant to § 2.2-3711.A(7) of the Code of Virginia for consultation with legal counsel. Additionally, Dr. Tsai moved that Mr. Arne Owens, Ms. Knachel, Mr. Gregory, Ms. Yeatts, Ms. Stamey, Mr. Jim Banning, Ms. Faye Lemon, Mr. Peter Oppen, Mr. Sammy Johnson and Ms. Wanda Jackson attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the board in its deliberations.

OPEN SESSION:

Dr. Tsai moved to certify that only public matters lawfully

exempted from open meeting requirements under Virginia law were discussed in the closed meeting and only public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the board. The motion was seconded and passed.

COMMITTEE REPORTS:

Professional Designation Committee (PDC)

Dr. Schlabach reported that the PDC had met and voted to go forward with a statutory proposal similar to the Board of Dentistry's trade name statute. Additionally, the PDC proposed an additional committee meeting in early June.

PRESIDENT'S REPORT:

Virginia Optometric Association (VOA) Letter Regarding Revised Regulations

Dr. Hettler addressed the Board regarding the VOA's response to the Board's notification of newly effective regulations that was e-mailed to all licensees on March 17, 2010. Ms. Thomas moved that the Board understands the VOA's concerns, to send out Board notifications in a more timely manner as short newsflashes and it encouraged open lines of communication.

EXECUTIVE DIRECTOR'S REPORT:

Statistics

Ms. Knachel presented a statistical analysis of the optometry licensees and disciplinary cases as follows:

licensees

204 (non-TPA)

215 (PD)

1284 (TPA)

1703 Total

open cases

18 in investigation

6 at probable cause

6 at APD

1 pending closure

31 Total

Budget

Ms. Knachel reported that the current cash balance on hand was \$283,134 and that the 2013 projected cash shortfall was being addressed in a NOIRA.

NEW BUSINESS:

Dr. Schlabach thanked Dr. Hettler for his service,

commitment and accomplishments during his tenure with the Board.

ADJOURNMENT:

The board concluded its meeting at 1:30 p.m.

David H. Hettler, O.D.
President

Leslie L. Knachel, M.P.H.
Executive Director